

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement)	OAH No. L-2004090079
of the Revoked Certificate of:)	
)	
PAUL LEVINE)	
)	
Petitioner.)	
_____)	

DECISION

This matter was heard before a quorum of the California Board of Accountancy in Los Angeles California, on November 11, 2004. Carolyn Dee Magnuson, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

Petitioner Paul Levine was present and was represented by Don D. Nelson, Attorney at Law.

Michael Granen, Deputy Attorney General, represented the Department of Justice, Office of the Attorney General.

FACTUAL FINDINGS

1. In January 1998, the Board of Accountancy (Board) issued a citation to Petitioner. The citation alleged one violation, set forth an order of abatement and correction that Petitioner was to implement, imposed a \$2,000 administrative fine, and set February 13, 1998 as the date on which, unless contested, the citation was to become a final order of the Board.

2. Copies of the citation were sent to Petitioner's address of record with the Board, both by certified mail and by first class mail. Thereafter, a Citation Final Notice was sent to Petitioner who failed to either appeal the citation or to comply with it within the allotted time.

3. On October 9, 1998, an Accusation was filed against Petitioner based on his failure to comply with the citation requirements. The Accusation was served on Petitioner by mail at his address of record with the Board. Petitioner failed to file a Notice of

Defense within 15 days after service of the Accusation on him. Thereafter, the Board, proceeding in default, entered a final decision against Petitioner.

4. However, the decision's Order is incomplete. It reads: "Certified Public Accountant License number CPA 15986 heretofore issued to Respondent Paul Levine. An effective date of March 4, 1999 has been assigned to this order."

5. Since the decision was rendered,¹ both the Board and the Petitioner have acted as if the implied, but omitted, words "is revoked" had been expressed. The Board's official web site shows Petitioner's license as having been revoked. Certainly, Petitioner's petition to the Board for reinstatement reflects his understanding that the Board has revoked his license.²

6. On September 3, 2004, Petitioner submitted his Petition for Reinstatement to the Board along with supporting documentation. The instant hearing followed.

7. Petitioner's explanation for his failure to respond to the Board's correspondence to him in 1998 and 1999 was that he was suffering from depression. Eventually, Petitioner sought professional help for his depression and was successfully treated. According to Petitioner, his psychologist believes the Petitioner is currently "doing fine."

8. Petitioner is presently working in a small accounting firm, under the supervision of a CPA, and is enjoying the practice. According to Petitioner, he does the same type of accounting work a CPA would do, but that work is reviewed and signed by the firm's licensed CPA. If his license were reinstated, Petitioner would stay with the same firm.

9. During the period of his license revocation, Petitioner continued to provide IRS accounting services. However, at one point, Petitioner was suspended from that practice by the IRS for failing to timely file tax returns. In addition, Petitioner also filed a small number of tax returns on which he identified himself as being a CPA.

10. Petitioner has more than fulfilled his continuing education obligation for the current reporting period.

11. Petitioner's home life, which was turbulent at the time Petitioner was profoundly depressed, is now quite idyllic.

¹ Although the Board sent notice of the revocation to Petitioner at his address of record, Petitioner also failed to open that correspondence, and so it was several years before Petitioner received actual notice that the Board had revoked his license. During that time, Petitioner continued to practice as a CPA. However, when he received actual notice of the Board's action, he stopped functioning as a CPA – for the most part. (See finding 8)

² Of course, the Board may, at any time, entirely resolve any ambiguity by amending the original order nunc pro tunc to include the missing words.

LEGAL CONCLUSIONS

12. The evidence established that, as long as Petitioner is not suffering from depression, allowing reinstatement of his CPA certificate would be consistent with the public interest. However, the evidence did not establish that Petitioner's present mental state could be expected to last indefinitely. The Board is concerned that the only evidence of Petitioner's current mental health status was Petitioner's self-report and that, in the past, Petitioner has done a poor job of self-monitoring his mental health and with motivating himself to meet all his professional obligations when he is depressed. Therefore, the Board determined that it would not be consistent with the public's safety to grant Petitioner an unrestricted reinstatement of his license.

13. However, the Board concluded that it would be appropriate to grant a conditional reinstatement of Petitioner's license if prudent conditions were imposed on the license.

ORDER

Petitioner's petition for an unrestricted reinstatement of his revoked CPA license is denied. However, a conditional license will be granted as follows: Petitioner's license is reinstated and immediately revoked. The revocation is stayed for a period of three years on the following conditions:

1. At his own expense, Petitioner will undergo a comprehensive psychological evaluation conducted by a psychologist or psychiatrist of his choosing, but one approved by the Board prior to Petitioner's undergoing the evaluation, and will have the evaluator promptly submit the evaluation report to the Board or its designee. Petitioner shall not engage in practice as a CPA until notified by the Board that Petitioner has been found to be mentally fit to practice.

2. In the event the evaluator determines that ongoing psychotherapy is required to ensure that Petitioner remains fit to practice, Petitioner shall undergo and continue treatment by a licensed psychotherapist of Petitioner's choice, and approved by the Board or its designee, until the treating psychotherapist certifies in writing in a report to the Board or its designee that treatment is no longer necessary. Petitioner shall have the treating psychotherapist submit reports to the Board at intervals determined by the Board or its designee. Petitioner is responsible for costs of treatment and reports.

3. Should the Board, at any time during the existence of the probationary license or the renewal thereof, determine upon satisfactory evidence that Petitioner has violated any of the terms and conditions under which the license was issued, the Board may, after notice and hearing, revoke or suspend the license.

4. If an Accusation or Petition to Revoke Probation is filed against Petitioner during the probationary period, the Board shall have continuing jurisdiction over that matter until the Accusation or Petition to Revoke Probation is resolved, and the period of this probation shall be extended until such resolution.

5. Upon the successful completion of probation, the stay imposed herein shall become permanent.

DATED: March 3, 2005



President, California Board of Accountancy